

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kammer et. al.

Title: LOCATION BASED SECURITY MODIFICATION SYSTEM AND METHOD

Appl. No.: 10/053,013

Filing Date: 1/18/2002

Patent No.: 7,591,020

Grant Date: 9/15/2009

Examiner: Abedin, Shanto

Art Unit: 2436

Confirmation 2103

Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 9/15/2009 as U.S. Patent No. 7,591,020.

The Patent Office determined that the patent was entitled to 1252 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of

the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 1841 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	2201 days
(b) Total Applicant delay:	360 days
Final PTA Determination:	1841 days

Applicants therefore respectfully request that the patent be accorded 1841 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date ____/10-09-2009/

By ____/Matthew J. Swietlik/

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 035451-0170
 Application Number: 10/053013
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	01/18/2002	0		
	14 month From Application date	03/18/2003	424		
	3 Year Period Starts	01/18/2005	1,096		
Edit Delete	Non-Final Office Action	10/27/2005	1,378	(954)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/27/2006	1,470		
Edit Delete	Non-Final Office Action	03/23/2006	1,525		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/23/2006	1,617		
Edit Delete	Final Office Action	08/31/2006	1,686		
	Final Office Action + 3 months	11/30/2006	1,777		
Edit Delete	Final Office Action Response Received at PTO	12/05/2006	1,782		
Edit Delete	Advisory Action	01/04/2007	1,812		
CLOSE WINDOW	ALL CASES				
Edit Delete	SELECT CASE Notice of Appeal Received at PTO	02/27/2007	1,866		89
Edit Delete	Appeal Brief Received at PTO	05/29/2007	1,957		
Edit Delete	Non-Final Office Action	09/05/2007	2,056		
	Non-Final Office Action + 3 months	12/05/2007	2,147		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/05/2008	2,209		62
Edit Delete	Final Office Action	05/30/2008	2,324		
Edit Delete	Final Office Action Response Received at PTO	07/30/2008	2,385		
Edit Delete	Non-Final Office Action	08/11/2008	2,397		
	Final Office Action + 3 months	08/30/2008	2,416		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/11/2008	2,489		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	12/31/2008	2,539		(50)
Edit Delete	Final Office Action	02/10/2009	2,580		
Edit Delete	Request For Continued Examination (including amendment)	03/27/2009	2,625	(1529) 2201	209
	3 Year Period Stopped	03/27/2009	2,625		
Edit Delete	Notice of Allowance	06/12/2009	2,702		

Edit Delete	Issue Fee Paid	07/02/2009	2,722
Edit Delete	Patent Grant Date	09/15/2009	2,797
		Totals:	2,201 360
		PTA:	1,841



Version: 3.02.05

LOGIN: Amanda Rutter

IP: 19.50.33.87

Foley & Lardner LLP